

THIS OPINION IS NOT A  
PRECEDENT OF THE TTAB

Oral Hearing: January 19, 2021

Mailed: April 12, 2021

**UNITED STATES PATENT AND TRADEMARK OFFICE**  
**Trademark Trial and Appeal Board**

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*In re Golden Bison Consolidated, LLC*  
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Serial No. 87980485  
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Mark VB Partridge and Jordan Arnot Leahey of Partridge Partners P.C.,  
for Golden Bison Consolidated, LLC.

Giancarlo Castro, Trademark Examining Attorney, Law Office 110,  
Chris A.F. Pedersen, Managing Attorney.

—————  
Before Bergsman, Adlin, and Pologeorgis,  
Administrative Trademark Judges.

Opinion by Pologeorgis, Administrative Trademark Judge:

Golden Bison Consolidated, LLC (“Applicant”) seeks registration on the Supplemental Register of the designation CERTIFIED BISON (in standard characters; BISON disclaimed) for “bison meat; prepackaged meals consisting primarily of bison meat and vegetables, all of the aforementioned bison meat being certified” in International Class 29.<sup>1</sup>

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<sup>1</sup> Application Serial No. 87980485, filed on January 8, 2018, initially based on a claim of a bona fide intent to use in the mark in commerce under Section 1(b) of the Trademark Act, 15 U.S.C. § 1051(b). On October 18, 2018, Applicant filed an amendment to allege use, claiming October 15, 2018 as both the date of first use and the date of first use in commerce.

The Trademark Examining Attorney refused registration under Section 23(c) of the Trademark Act, 15 U.S.C. § 1091(c), on the ground that Applicant's proposed mark, in its entirety, is the generic name of the identified goods and, as such, is unregistrable.<sup>2</sup>

When the refusal was made final, Applicant appealed and requested reconsideration. When the request for reconsideration was denied, the appeal resumed. The appeal is fully briefed. An oral hearing was held on January 19, 2021. For the reasons explained below, we affirm the refusal to register.<sup>3</sup>

## **I. Genericness - Applicable Law**

A mark proposed for registration on the Supplemental Register must be capable of distinguishing the applicant's goods or services. 15 U.S.C. § 1091. "Generic terms do not so qualify." *In re Emergency Alert Sols. Grp., LLC*, 122 USPQ2d 1088, 1089 (TTAB 2017); *see also Real Foods Pty Ltd. v. Frito-Lay N. Am., Inc.*, 906 F.3d 965, 128 USPQ2d 1370, 1372 n.3 (Fed. Cir. 2018) (citing *In re Am. Fertility Soc'y*, 188 F.3d

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<sup>2</sup> The Examining Attorney also refused registration on the ground that the designation CERTIFIED BISON is deceptively misdescriptive under Section 2(e)(1) of the Trademark Act, 15 U.S.C. § 1052(e)(1). In his April 26, 2019 and November 11, 2019 Office Actions, the Examining Attorney stated that the deceptively misdescriptive refusal would be withdrawn if Applicant amended its identification of goods to read as follows: "Bison meat; prepackaged meals consisting primarily of bison meat and vegetables, all of the aforementioned bison meat being certified." In its May 11, 2020 Request for Reconsideration, Applicant submitted an amendment complying with the requirement to amend the description of goods, which was approved by the Examining Attorney. Although the Examining Attorney did not affirmatively withdraw the deceptively misdescriptive refusal after accepting Applicant's amendment, the Examining Attorney did not address this refusal in his brief. Accordingly, we view the deceptively misdescriptive refusal as withdrawn.

<sup>3</sup> All TTABVue and Trademark Status and Document Retrieval ("TSDR") citations refer to the electronic file database for the involved application. All citations to the TSDR database are to the downloadable .pdf version of the documents.

1341, 51 USPQ2d 1832, 1833 (Fed. Cir. 1999)); *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1810 (Fed. Cir. 2001) (generic terms “are by definition incapable of indicating a particular source of the goods or services”).

The Office must demonstrate a term is generic by “clear evidence” of generic use. *See In re Hotels.com LP*, 573 F.3d 1300, 91 USPQ2d 1532, 1533 (Fed. Cir. 2009) (“The Patent and Trademark Office (PTO) bears the burden of establishing that a proposed mark is generic, ... and must demonstrate generic status by clear evidence.”); *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987); *see also* TRADEMARK MANUAL OF EXAMINING PROCEDURE (TMEP) § 1209.(c)(i) (Oct. 2018) (“The examining attorney has the burden of proving that a term is generic by clear evidence.”). “[R]egistration is properly refused if the word is the generic name of any of the goods or services for which registration is sought.” *In re Cordua Rests., Inc.*, 823 F.3d 594, 118 USPQ2d 1632, 1638 (Fed. Cir. 2016) (quoting 2 J. Thomas McCarthy, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 12:57 (4th ed. 2016)).

A generic term “is the common descriptive name of a class of goods or services.” *Princeton Vanguard, LLC v. Frito-Lay N. Am., Inc.*, 786 F.3d 960, 114 USPQ2d 1827, 1830 (Fed. Cir. 2015) (citing *H. Marvin Ginn Corp. v. Int’l Ass’n of Fire Chiefs, Inc.*, 782 F.2d 987, 228 USPQ 528, 530 (Fed. Cir. 1986)). Specifically, a generic term names the good or service. *Id.*; *see also* 2 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 12:20 (5th ed. Dec. 2020 update). There is a two-part test used to determine whether a designation is generic: (1) what is the genus (class or

category) of goods or services at issue?; and (2) does the relevant public understand the designation primarily to refer to that genus of goods or services? *Princeton Vanguard*, 114 USPQ2d at 1803 (citing *Marvin Ginn*, 228 USPQ at 530); *Couch/Braunsdorf Affinity, Inc. v. 12 Interactive, LLC*, 110 USPQ2d 1458, 1462 (TTAB 2014). “The critical issue in genericness cases is whether members of the relevant public primarily use or understand the term sought to be protected to refer to the genus of goods or services in question.” *Marvin Ginn*, 228 USPQ at 530.

Any term that the relevant public uses or understands to refer to the genus of goods, or a key aspect or subcategory of the genus, is generic. *Royal Crown Co., Inc. v. Coca-Cola Co.*, 892 F.3d 1358, 127 USPQ2d 1041, 1046-47 (Fed. Cir. 2018). “[A] term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *Cordua*, 118 USPQ2d at 1638 (holding CHURRASCOS, a word that is generic for a type of grilled meat, to be generic for restaurant services because it referred to a key aspect of those services); *see also In re Nordic Naturals, Inc.*, 755 F.3d 1340, 111 USPQ2d 1495 (Fed. Cir. 2014) (CHILDREN’S DHA generic for DHA supplements for children); *In re Northland Aluminum Prods., Inc.*, 777 F.2d 1556, 227 USPQ 961 (Fed. Cir. 1985) (BUNDT generic for ring cake mixes, *i.e.*, the subcategory “bundt cakes.”).

Moreover, we must assess whether “the public understands the mark, *as a whole*, to refer to [the] genus” of an applicant’s goods or services. *Princeton Vanguard*, 114 USPQ2d at 1831 (citing *Marvin Ginn*, 228 USPQ at 530). In other words, even if

the constituent parts of a compound designation may be generic of the identified goods or services, the designation, as a whole, will not be considered generic unless there is evidence “that the separate words joined to form a compound have a meaning identical to the meaning common usage would ascribe to those words as a compound.” *Id.* (citing *In re Gould*, 834 F.2d 1017, 5 USPQ 1110, 1111-12 (Fed. Cir. 1987)).

“Evidence of the public’s understanding of the term may be obtained from any competent source, such as purchaser testimony, consumer surveys, listings in dictionaries, trade journals, newspapers and other publications.” *Royal Crown*, 127 USPQ2d at 1046 (quoting *In re Merrill Lynch, Pierce, Fenner, and Smith Inc.*, 4 USPQ2d at 1143); *see also Cordua*, 118 USPQ2d at 1634; *Princeton Vanguard*, 114 USPQ2d at 1830; *In re Reed Elsevier Props. Inc.*, 482 F.3d 1376, 82 USPQ2d 1378, 1380 (Fed. Cir. 2007) (finding third-party websites competent sources for determining what the relevant public understands mark to mean).

#### **A. What is the Genus of the Goods at Issue?**

Our first task is to determine the proper genus. In defining the genus, we commonly look to the identification of goods or services in the application. *See Reed Elsevier*, 82 USPQ2d at 1380; *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551, 1552 (Fed. Cir. 1991) (a proper genericness inquiry focuses on the identification set forth in the application or certificate of registration); *In re Serial Prodcast, LLC*, 126 USPQ2d 1061, 1063 (TTAB 2018) (proper genus generally is “set forth by the recitation of services in each subject application.”). Applicant has identified its goods as “bison meat; prepackaged meals consisting primarily of bison meat and vegetables,

all of the aforementioned bison meat being certified.” The Examining contends that Applicant’s identification of goods appropriately defines the genus of Applicant’s goods. We agree with the Examining Attorney and find that the identification of goods adequately defines the genus.<sup>4</sup>

### **B. Who are the Relevant Purchasers?**

The second part of the *Marvin Ginn* test is whether the term sought to be registered is understood by the relevant public primarily to refer to that genus of goods or services. “The relevant public for a genericness determination is the purchasing or consuming public for the identified goods.” *Frito-Lay N. Am., Inc. v. Princeton Vanguard LLC*, 124 USPQ2d 1184, 1187 (TTAB 2017) (citing *Magic Wand*, 19 USPQ2d at 1552); *Sheetz of Del., Inc. v. Doctor’s Assocs. Inc.*, 108 USPQ2d 1341, 1351 (TTAB 2013). Because there are no restrictions or limitations to the channels of trade or classes of consumers for Applicant’s identified goods, the relevant consumers consist of: (1) the general U.S. public who purchase bison meat or prepackaged meals

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<sup>4</sup> Applicant argues, in its reply brief, that during the course of the prosecution, the Examining Attorney had agreed that the genus at issue was “bison meat” or “prepackaged goods meals consisting of bison meat and vegetables.” See Applicant’s Reply Brief, p. 3, 11 TTABVUE 4. Applicant further maintains in his reply brief for the first time that the Examining Attorney has improperly changed the genus of the goods by adding the language “all of the aforementioned bison meat being certified” and, by doing so, has significantly changed the rationale for the genericness refusal. *Id.* at p. 4, 11 TTABVUE 5. Applicant’s argument is unavailing. Applicant submitted an amendment of its identification of goods to include the language “all of the aforementioned bison meat being certified” when it filed its request for reconsideration. See May 11, 2020 Request for Reconsideration, TSDR p. 8. Accordingly, it was proper for the Examining Attorney to consider the genus of Applicant’s goods as “bison meat” or “prepackaged goods meals consisting of bison meat and vegetables” prior to the amendment. However, since Applicant amended its identification of goods to include the language “all of the aforementioned bison meat being certified” just prior to appeal, the Examining Attorney’s consideration of the genus of the goods, as amended, in his appeal brief is appropriate.

consisting primarily of bison meat and vegetables for personal consumption that is certified; and (2) U.S. institutional customers such as restaurants who serve bison meat that is certified.

### **C. How does the Relevant Public Perceive the Wording CERTIFIED BISON?**

In support of the refusal, the Examining Attorney submitted evidence obtained from the Internet to demonstrate that relevant consumers view the wording CERTIFIED BISON as the generic name for Applicant's identified goods. The evidence submitted by the Examining Attorney is summarized below (emphasis added by the Board):

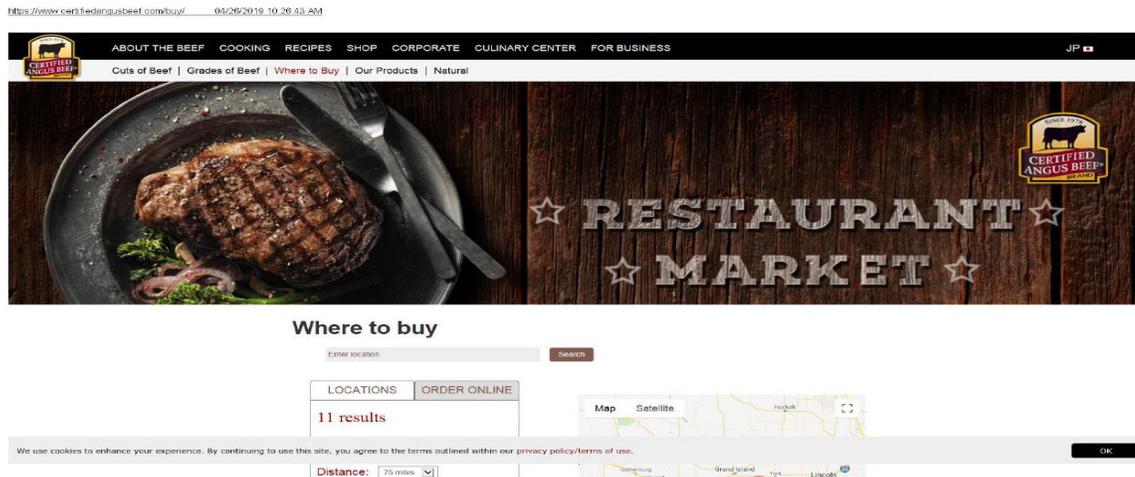
- screenshots from the website [www.ams.usda.gov](http://www.ams.usda.gov) stating that the Agricultural Marketing Service of the United States Department of Agriculture “**provides certification of meat carcasses** for a number of marketing programs that make claims concerning breed and carcass characteristics. These characteristics go beyond the requirements for official USDA grades.” Although the website provides certified meat programs for beef, veal, pork and lamb, the website does not identify any certification programs for bison.<sup>5</sup>
- screenshots from the website [www.fsis.usda.gov](http://www.fsis.usda.gov) providing definitions of various meat and poultry labeling terms including the term “**certified**” which is defined as follows: “The term ‘**certified**’ implies that the USDA’s Food Safety and Inspection Services and the Agriculture Marketing Services have officially evaluated a meat product for class, grade, or other quality characteristics (e.g. ‘**Certified Angus Beef**’). When used under other circumstances, the term must be closely associated with the name of the organization responsible for the ‘certification’ process, e.g., ‘XYZ Company’s Certified Beef.’”;<sup>6</sup>

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<sup>5</sup> April 28, 2018 Office Action, TSDR pp. 4-6.

<sup>6</sup> *Id.*, TSDR pp. 7-10 and April 26, 2019 Office Action, TSDR pp. 5-8.

- screenshot from the website of a third-party seller of angus beef, i.e., [www.certifiedangusbeef.com](http://www.certifiedangusbeef.com), as displayed below:<sup>7</sup>



low-quality grades.

**Q: How is beef selected for the *Certified Angus Beef*® brand?**

**A:** The same independent USDA graders inspect black-hided cattle (typical of the Angus breed) and give it a grade. All beef considered for the brand must be the best Choice, or Prime, beef – truly the top of the scale. This top-quality

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cut, then it earns the distinctive *Certified Angus Beef*® brand label.

- screenshot from Grand Natural Meats’ website discussing, among other things, nutritional information about bison meat and indicating that “[t]he USDA has inspected and approved every cut of bison meat we ship out... .”<sup>8</sup>
- screenshot from the Frequently Asked Questions section of The Shore Bison’s (a third-party seller of bison meat) website discussing, among other things, what bison eat, where their bison is raised, whether a

<sup>7</sup> April 26, 2019 Office Action, TSDR pp. 9-10.

<sup>8</sup> *Id.*; TSDR pp. 11-13.

person who follows a Paleo, Primal or Whole 30 plan can eat bison, and stating that their **bison is certified organic** by the USDA;<sup>9</sup>

- screenshot from Ozark Valley Bison Farm, LLC’s website indicating that the bison they sell is **certified grass fed** by an entity known as AGW. The relevant portion of the screenshot is displayed below.<sup>10</sup>

[http://www.ozarkbisons.com/bison\\_meat.php](http://www.ozarkbisons.com/bison_meat.php) 04/26/2019 11:03:34 PM



- screenshot from the Encyclopedia Britannica website, [www.britannica.com](http://www.britannica.com), providing information about the characteristics of the bison mammal;<sup>11</sup>
- screenshots from the retailer Thrive Market’s website displaying for sale Grass Fed Bison with Kabocha Squash and Spinach Baby Food and indicating that bison ingredient is “GAP **certified bison**.”;<sup>12</sup>
- screenshots from the Corrales Growers Market website showing that one of the market vendors, i.e., Lamont’s Buffalo, sells “USDA **certified bison**.”;<sup>13</sup> and

<sup>9</sup> *Id.*, TSDR pp. 14-16.

<sup>10</sup> *Id.*, TSDR p. 23.

<sup>11</sup> November 11, 2019 Final Office Action, TSDR pp. 5-12.

<sup>12</sup> June 16, 2020 Denial of Request for Reconsideration, TSDR pp. 4-10.

<sup>13</sup> *Id.*, TSDR pp. 11-15.

- screenshots from the website [www.globalanimalpartnership.com](http://www.globalanimalpartnership.com) discussing standards for raising bison based on the “**G.A.P. animal welfare certification rating**.”<sup>14</sup>

In addition to the foregoing third-party websites, the Examining Attorney also submitted screenshots from the “Frequently Asked Questions” section of Applicant’s website, [www.certifiedbison.com](http://www.certifiedbison.com), that discusses, among other things: (1) which quality assurances are ensured by Applicant’s certified bison seal; (2) what ranching and animal welfare standards are met under Applicant’s certified bison seal; and (3) what food safety inspections, testing, and verification are required for Applicant’s “Certified Bison.”<sup>15</sup>

The Examining Attorney concludes that the foregoing evidence establishes that “certified bison” would be perceived as a generic term by relevant consumers of bison meat who are seeking to purchase bison of a particular quality that has been certified according to a particular standard.<sup>16</sup>

In challenging the refusal, Applicant maintains that since 2011 it has established itself in the meat industry as the premier supplier of bison products and services by developing superior ranching, animal husbandry, and meat processing standards and protocols to craft its bison products.<sup>17</sup> Applicant further contends that it has perfected

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<sup>14</sup> *Id.*, TSDR p. 20-22.

<sup>15</sup> *Id.*, TSDR pp. 16-19.

<sup>16</sup> Examining Attorney’s Brief, 10 TTABVUE 9.

<sup>17</sup> Applicant’s May 11, 2020 Request for Reconsideration, Exh. 1, Declaration of Chad Bullinger, Chief Operations Office at High Plains Bison, LLC, a subsidiary of Applicant (“Bullinger Decl.”), ¶ 5; TSDR p. 15.

its ranch-raised bison using its own specifications and processes, and without the use of hormones, antibiotics, or animal by-products, to deliver high quality products.<sup>18</sup> Applicant asserts that it uses its CERTIFIED BISON trademark to identify the source of its bison products based on the standards it has created.<sup>19</sup>

Applicant argues that the Examining Attorney failed to demonstrate by clear evidence that its applied-for mark is generic.<sup>20</sup> Specifically, Applicant contends that none of the evidence submitted by the Examining Attorney demonstrates that the compound wording “certified bison,” when viewed as a unitary phrase, is the generic name for its identified goods.<sup>21</sup>

First, Applicant disputes that the evidence the Examining Attorney submitted from the USDA website, including the screenshot from the Agricultural Marketing Service of the USDA’s website, demonstrates that the designation CERTIFIED BISON is generic for Applicant’s identified goods.<sup>22</sup> Specifically, Applicant, citing to the Federal Meat Inspection Act, 21 U.S.C. § 601 et seq., maintains that the USDA is the competent Federal governmental inspecting and grading authority only over those animal proteins specified in the Federal Meat Inspection Act which purportedly does not include bison meat.<sup>23</sup> Applicant further contends that the USDA neither

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<sup>18</sup> *Id.*; Bullinger Decl., ¶ 6; TSDR p. 15.

<sup>19</sup> *Id.*; Bullinger Decl., ¶ 8; TSDR p. 15.

<sup>20</sup> Applicant’s Appeal Brief, p. 9; 8 TTABVUE 10.

<sup>21</sup> *Id.* at p. 10; 8 TTABVUE 11.

<sup>22</sup> *Id.* at p. 14; 8 TTABUVE 15.

<sup>23</sup> *Id.*

inspects nor grades meat of elk, wild boar, rabbit, venison, alligator or ostrich.<sup>24</sup> Consequently, Applicant concludes that bison meat is not “certified” or otherwise graded by the USDA. In other words, Applicant asserts that “USDA Certified Bison” simply does not exist.<sup>25</sup> However, for food safety purposes, Applicant acknowledges that bison meat (and other exotic meats) may be, but is not required to be, processed at a USDA inspected plant.<sup>26</sup> If processed pursuant to USDA requirements bison meat thereby garners the right to bear the USDA-Inspected seal.<sup>27</sup> But bison meat is never “certified” by the USDA,<sup>28</sup> as was conceded by the Examining Attorney.<sup>29</sup> Thus, Applicant argues that the Examining Attorney’s reliance on USDA webpages related to the grading of beef under the Federal Meat Inspection Act is simply inapplicable to bison and, therefore, irrelevant.<sup>30</sup>

Applicant also argues that some of the other third-party Internet evidence submitted by the Examining Attorney similarly does not demonstrate that the designation CERTIFIED BISON is generic for its identified goods. With regard to this evidence, Applicant states the following:<sup>31</sup>

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<sup>24</sup> *Id.* We note that § 601(j) of the Federal Meat Inspection Act defines “meat food product” as “... the carcass of any cattle, sheep, swine, or goats ... .” 21 U.S.C. § 601(j).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Examining Attorney Brief, p. 7; 10 TTABVUE 8 (“The Examining Attorney concedes that there is no USDA (United States Department of Agriculture) grading or certification for bison meat... .”)

<sup>30</sup> Applicant’s Appeal Brief, p. 14, 8 TTABVUE 15.

<sup>31</sup> *Id.* at pp. 15-16; 8 TTABVUE 17-18.

- “Thrivemarket.com: This website refers to ‘GAP certified bison’. This is a reference to GAP certification, a phrase descriptive of certain meat products, meaning humanely raised according to the Global Animal Partnership. It does not show meaning of the compound term ‘certified bison.’”
- “Corralesgrowermarket.com/vendors: This cite contains one reference to ‘USDA certified bison’. This is an isolated third-party statement. ... As noted, the USDA does not certify bison.”
- “Globalanimalpartnership.org: This website refers to humane growing practices. It relates to ‘GAP Certification,’ which is claimed as a trademark. It does not show that the relevant public uses and understands ‘certified bison’ to be the generic term for bison meat.”

With regard to its own website of record, i.e., [www.certifiedbison.com](http://www.certifiedbison.com), Applicant asserts that it uses “certified” as a descriptive term for bison and, therefore, consumers who encounter the designation CERTIFIED BISON would perceive it as proper technical trademark use, not as a generic term.<sup>32</sup>

Applicant also submitted the dictionary definition of the term “certified” which is defined as “genuine, authentic.”<sup>33</sup> In light of this definition, Applicant contends that relevant “consumers would know that the meaning of ‘certified’ includes ‘genuine’ or ‘authentic’” and, therefore, ordinary consumers of bison meat would view the designation CERTIFIED BISON as descriptive of Applicant’s goods, not generic.<sup>34</sup>

Additionally, Applicant relies on the U.S. Supreme Court decision *USPTO v. Booking.com B.V.*, 140 S. Ct. 2298, 2020 USPQ2d 10729 (2020) where the Court found

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<sup>32</sup> Applicant’s Reply Brief, pp. 5-6, 11 TTABVUE 6-7.

<sup>33</sup> Applicant’s October 16, 2019 Response to Office Action, Exh. B, TSDR pp. 17-21.

<sup>34</sup> *Id.*; TSDR p. 10. During oral hearing, Applicant claimed that it submitted evidence demonstrating that there is no dictionary definition for the designation “certified bison,” as a unitary phrase. There is no such evidence of record.

that relevant consumers would not perceive the designation “booking.com,” when viewed in its entirety, as the generic name for various online hotel reservation services for others. Applicant specifically relies on the following language from the Court’s decision:

“... whether “Booking.com” is generic turns on whether that term, taken as a whole, signifies to consumers the class of online hotel reservation services. Thus, if “Booking.com” were generic, we might expect consumer to understand Travelocity – another such service – to be a “Booking.com.” We might similarly expect that a consumer, searching for a trusted source of online hotel-reservation services, could ask a frequent traveler to name her favorite “Booking.com” provider.

Consumers do not in fact perceive the term “Booking.com” that way. . . . Because “Booking.com” is not a generic name to consumers, it is not generic.

2020 USPQ2d 10729, at \* 5.

Similarly, Applicant contends that the wording “CERTIFIED BISON,” taken as a whole, is not generic for bison meat.<sup>35</sup> Applicant maintains that, “[i]f it were generic, we might expect consumers to understand any outlet offering bison meat or prepackaged meals to be offering a ‘certified Bison.’”<sup>36</sup> Applicant argues, however, that there is no evidence of record to support a finding that “CERTIFIED BISON” as a whole is used or understood by relevant to consumers to signify a class of bison meat or prepackaged meals and that the designation CERTIFIED BISON is not in fact used by consumers in that manner.<sup>37</sup>

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<sup>35</sup> Applicant’s Appeal Brief, p. 10; 8 TTABVUE 11.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

Finally, Applicant argues the USPTO has previously registered marks that have a similar structure as Applicant’s applied-for CERTIFIED BISON mark for similar goods and, therefore, Applicant’s mark should also be permitted to register.<sup>38</sup> In support of its argument, Applicant submitted copies of the following relevant third-party registrations:<sup>39</sup>

<b>Reg. No.</b>	<b>Mark</b>	<b>Relevant Goods/Services</b>
2692398  Principal Register Section 2(f)	CERTIFIED HEREFORD BEEF (BEEF disclaimed)	“beef,” in Class 29.
2394495  Principal Register Section 2(f)	CERTIFIED ANGUS BEEF	“marketing services, namely, promoting the sale of beef products for meat packagers, distributors, wholesalers and retailers through the distribution of

<sup>38</sup> *Id.* at p. 21; 8 TTABVUE 22.

<sup>39</sup> Applicant’s May 17, 2020 Request for Reconsideration, TSDR pp. 17-37. Applicant also submitted several third-party registrations for marks that do not consist of the term CERTIFIED in addition to the name of a meat or food product. As such, these third-party registrations have little, if any, probative value in our analysis. Accordingly, we have given these registrations no further consideration. Further, Applicant submitted a copy of Reg. No. 4267386 for the mark SENDICK’S BLACK ANGUS BEEF and design (BLACK ANGUS BEEF disclaimed) for “Black Angus beef; meat primarily prepared with or substantially made from Black Angus beef.” This registration has been canceled. A canceled registration has limited, if any, probative value and, in any event, is not evidence of use of a mark or that the public is familiar with its use. *Kemi Organics, LLC v. Gupta*, 126 USPQ2d 1601, 1606 (TTAB 2018) (a cancelled registration is not evidence of use of the mark at any time); *In re Pedersen*, 109 USPQ2d 1185, 1197 (TTAB 2013) (citing *Anderson, Clayton & Co. v. Krier*, 478 F.2d 1246, 1248, 178 USPQ 46, 47 (CCPA 1973) (statutory benefits of registration disappear when the registration is cancelled)). Thus, we give no further consideration to this particular third-party registration.

Finally, Applicant submitted a copy of a registration it owns, i.e., Reg. No. 3175323, for the mark HIGH PLAINS BISON (in standard characters; BISON disclaimed) issued on the Principal Register for “bison meat; prepackaged meals consisting primarily of bison meat and vegetables, including potatoes, with cheese and/or sauce,” in Class 29.

Reg. No.	Mark	Relevant Goods/Services
		promotional materials and advertising such as point of purchase displays, banners, labeling materials and advertisement slicks,” in Class 35.
4303602 Principal Register	HERO CERTIFIED BURGERS (CERTIFIED BURGERS disclaimed)	“Fast-food restaurants; Restaurant services; Take-out restaurant services,” in Class 43.
2431937 Principal Register	KING’S CERTIFIED SEAFOOD (CERTIFIED SEAFOOD disclaimed)	“Restaurant services,” in Class 42. <sup>40</sup>
5396595 Principal Register	 (CERTIFIED and MEATBALL COMPANY disclaimed)	“Restaurant services,” in Class 43.

### III Analysis

Because the wording “bison meat” is included in Applicant’s identification of goods, we find the designation “BISON” is generic for Applicant’s goods and has been appropriately disclaimed by Applicant. *See* TMEP § 1213.03(b) (“If a mark is comprised in part of matter that, as applied to the goods or services, is generic or does

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<sup>40</sup> When this registration issued, “restaurant services” were classified in International Class 42 and the registration certificate reflects this class. “Restaurant services,” however, are currently classified in International Class 43.

not function as a mark, the matter **must** be disclaimed to permit registration on the Principal Register (including registration under §2(f) of the Act) or **on the Supplemental Register.**) (emphasis added). The issue before us then is to determine whether the Internet materials submitted by the Examining Attorney, as well as the dictionary definition of the term “certified” submitted by Applicant,<sup>41</sup> constitute “clear evidence” demonstrating that the addition of the term CERTIFIED to the generic wording BISON results in a generic designation in relation to the identified goods. We find that it does.

As previously noted, the Federal Circuit has held that “a term can be generic for a genus of goods or services if the relevant public . . . understands the term to refer to a *key aspect* of that genus.” *Royal Crown Co. v. The Coca-Cola Co.*, 127 USPQ2d at 1046 (quoting *In re Cordua Rests. Inc.*, 118 USPQ2d at 1637). The Federal Circuit has also held that “a term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.” *In re Cordua Rests. Inc.*, 118 USPQ2d at 1638.

We acknowledge that the evidence of record shows that the USDA does not certify bison meat and the Examining Attorney concedes as much. Moreover, while none of the evidence submitted by the Examining Attorney refers to bison meat as “certified

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<sup>41</sup> The Examining Attorney may rely upon evidence submitted by Applicant to support his genericness refusal. *Cf.* Trademark Rule 2.120(k)(7); 37 C.F.R. § 2.120(k)(7); *see also Nazon v. Ghiorse*, 119 USPQ2d 1178, 1181 n.6 (TTAB 2016) (“Once evidence is properly of record, it may be relied on by any party for any purpose.”).

bison” alone, as a unitary term, the evidence does include three websites showing use of the wording “certified bison” in conjunction with other wording, i.e., “GAP Certified Bison” and “USDA Certified Bison.”

Notwithstanding, when the evidence is viewed in its entirety, it is clear that relevant consumers of meat products have been exposed to the concept that meat products may be certified, whether they are certified as organic, grass-fed, raised in a particular manner, or genuine. Moreover, Applicant’s identification of goods, as well as its own website, specifically states that its bison meat products are certified. The record also includes the dictionary definition of the term “certified,” which is defined as “genuine, authentic,” and which is included in Applicant’s identification of goods and thus the applicable genus of goods. As such, consumers will perceive the designation CERTIFIED BISON as a subcategory or subgenus of bison meat. In other words, relevant consumers perceive the wording CERTIFIED BISON as the subgenus and key aspect of bison meat that meets certain criteria. We cannot ignore what may be plainly obvious -- a term may be generic if, by its very definition, it will be primarily understood as a reference to a genus or subgenus of any of the identified goods. *Royal Crown Co., Inc.*, 127 USPQ2d at 1046 (“a term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole.”).

Additionally, the Board has held in other contexts that the addition of the term “certified” to other generic matter will render a mark incapable of functioning as a

source indicator, when the applied-for mark is considered as a whole. More specifically, when the term “certified” is used in connection with certification services, the term has been found to be generic for such services. *See, e.g., In re Software Publishers Ass’n*, 69 USPQ2d 2009 (TTAB 2003) (CERTIFIED SOFTWARE MANAGER found generic for an applied-for certification mark for “software asset and licensing management”); *In re Mortg. Bankers Ass’n of Am.*, 226 USPQ 954, 956 (TTAB 1985) (“[A]pplicant’s services comprise an examination and testing procedure for mortgage banker[s], the successful completion of which ‘certifies’ that is, that he or she has achieved (sic) a certain level of quality of fitness in the mortgage banking field. In our view, the designation sought to be registered [CERTIFIED MORTGAGE BANKER] is so highly descriptive of applicant’s services, which essentially are the providing of a certification program for mortgage bankers, as to be incapable of identifying the source of those services”).

While Applicant is not seeking to register a certification mark per se, the evidence of record nonetheless shows that Applicant provides its customers with bison meat products certified to meet certain standards ascribed by Applicant. Contrary to Applicant’s argument, the fact that the certification of Applicant’s bison meat products are not based on U.S. governmental or industry-wide standards but instead are based on its own criteria or criteria of a purported affiliated entity, i.e., the Bison Counsel, is of no consequence. *See, e.g., In re Mortgage Bankers Ass’n of America*, 226 USPQ at 956 (the designation CERTIFIED MORTGAGE BANKER for educational services, namely, providing qualifying examinations, testing and grading in the field

of real estate finance found generic notwithstanding the fact that applicant purportedly was the only organization at the time providing qualifying examinations, testing and grading in the mortgage banking field).

With regard to Applicant's relevant third-party registration evidence, we find that the third-party registrations which issued on the Principal Register that include the term CERTIFIED and the name of a meat or food product and where such terms are disclaimed are of little probative value. This holds true since we are without the benefit of the file histories for any of these third-party registrations. Therefore, we cannot draw any conclusions as to why the disclaimers were made or whether the disclaimed wording, in its entirety, is merely descriptive of the identified goods or the generic name of the goods or a combination of both.

The two third-party registrations for the marks CERTIFIED HERESFORD BEEF for "beef" and CERTIFIED ANGUS BEEF for, among other things, "marketing services, namely, promoting the sale of beef products for meat packagers" appear to lend support to Applicant's argument that marks similar to the structure of Applicant's mark have previously been allowed to register. The fact that the USPTO has previously registered the marks CERTIFIED HERESFORD BEEF and CERTIFIED ANGUS BEEF on different records and the latter registered mark for marketing services and not a meat product does not entitle Applicant to register CERTIFIED BISON for its identified bison meat products.

"While we recognize that 'consistency is highly desirable,' consistency in examination is not itself a substantive rule of trademark law, and a desire for

consistency with the decisions of prior examining attorneys must yield to proper determinations under the Trademark Act and rules.” *In re Ala. Tourism Dep’t*, 2020 USPQ2d 10485, at \*11 (TTAB 2020) (quoting *In re Am. Furniture Warehouse Co.*, 126 USPQ2d 1400, 1407 (TTAB 2018) (internal quotations omitted)). We must assess each mark on its own facts and record. *In re Nett Designs Inc.*, 236 F.3d 1339, 57 USPQ2d 1564, 1566 (Fed. Cir. 2001) (“Even if some prior registrations had some characteristics similar to [Applicant’s] application, the PTO’s allowance of such prior registrations does not bind the Board or this court.”).

Finally, Applicant’s reliance on the Supreme Court’s decision in *Booking.com* is unpersuasive. In that decision, the Court was considering whether a composite designation comprised of a purportedly generic term and a top level domain name is capable of functioning as a service mark for online hotel reservation services. By contrast, the issue presented here is whether the combination of the term “certified,” which is defined as “authentic” or “genuine,” with the generic term “bison” renders the composite designation generic for Applicant’s identified goods. *Booking.com* is distinguishable because it is technically impossible for there to be more than one “booking.com,” whereas here, the record shows several uses of “certified bison” and reveals that certain meat products are commonly identified as “certified.”

Quite simply, the record supports a finding that the primary significance of the designation CERTIFIED BISON in the minds of the relevant consuming public is to identify a good rather than to identify a single source of the good. More specifically, we conclude that, taken as a whole, the wording CERTIFIED BISON identifies a

subgenus and key aspect of bison meat and, therefore, is the generic name of Applicant's goods. *In re Cordua Rests. Inc.*, 118 USPQ2d at 1638 (explaining that "a term is generic if the relevant public understands the term to refer to part of the claimed genus of goods or services, even if the public does not understand the term to refer to the broad genus as a whole."); *see also In re Central Sprinkler Co.*, 49 USPQ2d 1194, 1199 (TTAB 1998) (ATTIC "directly names the most important or central aspect or purpose of applicant's goods, that the sprinklers are used in attics, this term is generic and should be freely available for use by competitors.").

**Decision:** The refusal to register Applicant's proposed mark CERTIFIED BISON on the Supplemental Register on the ground that the designation, in its entirety, is the generic name for the identified goods under Sections 23(c) of the Trademark Act is affirmed.